

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 716 of 1995

with

CRIMINAL APPEAL No. 912 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and

MR.JUSTICE D.G.KARIA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

To be referred to the Reporter or not ? YES

3. Whether Their Lordships wish to see the fair copy
of the judgement ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil
Judge ? YES, TO ALL COURTS IMMEDIATELY.

DHARMENDRA DHIRAJLAL SONEJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 716 of 1995

MR AD SHAH for the appellant.

MR NR SHUKLA PUBLIC PROSECUTOR for the State.

2. Criminal Appeal No. 912 of 1995

MR.NR SHUKLA PUBLIC PROSECUTOR FOR APPELLANT-STATE.

MR AD SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA and

MR D.G.KARIA JJ.

Date of decision: 4/09/96

ORAL JUDGEMENT (PER: VAIDYA J)

The enigmatic problem which incidentally we have been called upon to resolve in these two appeals, one of which is for the enhancement of the sentence is a question - "whether and when in the midst of an intense rampant, unabated, psychic pollution challengingly, spreading like the forest fire all around in the society and in particular engulfing and victimizing the unguarded young generation of slippery age making them prone to commit crimes because of the mesmerizing uncontrolled obscene films exhibiting sex and crime day in and day-out beamed through the channels on the TV and the Government as if unconcerned with this doing nothing about it, can the unwary victim of such psychic pollution inflicted disease be punished and if at all punished savagely for the alleged offence of rape for 7 years ? Over and above and apart parents, has indeed the Government no public duty rather accountability to its citizen to take care of their psychic health by controlling and preventing the causes spreading the most contagious disease ? What for this purpose, what indeed the women action groups do effectively to prevent, regulate and control the production of indecent films and the pronographic literature being televised committing shameless continuous affront and outrage on modesty of the women, young girls and even girls of tender age to protect their modesty, dignity and honour ? In fact, what indeed all the so called sensible and prudent members of the society and the social reformists and action groups are doing to meet with and eradicate the psychic virus spread through vulgar TV culture ? Is mere condemnation of blue film exhibition in theatres, T.V.s and drama is enough without there being any supplementary concrete action by the law enforcing agency in this regard ? Whether mere

enactments of certain special Acts by the Parliament such as (i) The indecent Representation of Women (Prohibition) Act, 1986, (ii) The Commission of Sati (Prevention) Act, 1987, (iii) Andhra Pradesh Devdashis (Prohibition & Dedication) Act, 1988; (iv) The Medical Termination of Pregnancy Act, 1971, (v) The Maternity Benefits Act, 1988, (vi) The National Commission for Women Act, 1990; (vii) Dowry Prohibition Act, 1961, (viii) Adding Section 304-B (Dowry-death) in IP Code, (ix) Adding Section 498-A in I.P Code (cruelty by husband) (x) Adding sections 113(A) {Presumption as to the abetment of suicide by married women}, 113-B {presumption as to dowry death}, and 114-A {Presumption as to absence of consent in certain prosecutions for rape} in the Indian Evidence Act, (xi) Immoral Traffic (Prevention) Act, 1956, and many others, can be said to be 'be all and end all' of the matter in face of increasing crimes against girls and women which can certainly be attributed to very great extent to dirty film culture polluting innocents, impressionable young ones ? These indeed are some of the most vexed and vital and accordingly disturbing questions where almost all appear to be at total loss to understand as what to do and accordingly, we feel that judicial discretion, rather the wisdom on the point involved warrants, mandates us to discharge our duty to the society by specifically observing something which may ultimately flood light the neglected issue awakening the social spirit and the Government to attend to it now or never before it is too late !!

1.1 We at the very outset of this judgement make it clear that the constraints under which we have been called upon to highlight, resolve and recommend remedy to the problem, if possible, is not at all any justification of crime committed by accused out of his immaturity being victim of blue film culture but it is entirely because the State ultimately not satisfied with 7 years RI filing an appeal for the enhancement of sentence and the learned APP still further insisting upon not to reduce the sentence of the young accused, where he in our opinion cannot be held wholly accountable but for the contributory psychic pollution which has taken toll of him and takes toll of many such other unwary young accused persons of our age, that we have undertaken this detailed exercise.

2. In order to appreciate the aforesaid questions as to in what background and context the same arise, it is indeed first of all necessary to succinctly narrate the prosecution case as it gets reflected in the charge (EX-2) and the circumstances leading to filing of the

present two appeals.

2.1 It is the prosecution case that on 6-4-1990 in between 12-00 hours & 13-00 hours accused-Dharmendra committed rape on Anupama aged about 13 and half years in her house, situated at Samratnagar, Ishanpur, Ahmedabad. On the basis of this allegation, the complaint (EX-22) came to be filed by PW-2 Anupama before PW-6 Laxmanbhai Rupabhai Damor, PI Vatva Police Station, Ahmedabad. After the investigation was over, the accused came to be chargesheeted to stand the trial for the alleged offences punishable under sections 376 and 452 of the IPC before the Sessions Court at Ahmedabad.

3. At trial, the accused pleaded not guilty and claimed to be tried. His case was that of total denial. The trial court accepting and relying upon the evidence of PW-2 Anupama as corroborated by the medical evidence brought on record that of PW-6 Dr.R.I.Patel, convicted the accused for the offence of rape under section 376 of IPC sentencing him to suffer RI for 7 years and to pay a fine of Rs. 1000/-, and in default, to undergo further RI for two months. So far as the offence punishable under section 452 of the IPC is concerned, the accused was sentenced to suffer RI for two years, and to pay a fine of Rs. 500/- and in default to undergo further RI for 15 days. Both these substantive sentences were ordered to run concurrently. It is this order, which is challenged before us by way of two Criminal Appeal No. 716/95 and 912/95. The first one is by the accused against his order of conviction and sentence while the second one is by the State of Gujarat for the enhancement of sentence.

4. When this matter was called out, Mr. Ashok Shah, the learned advocate appearing for the appellant-accused fairly submitted that so far as the order of conviction is concerned, he was indeed not in a position to challenge the same and accordingly he would like to confine himself only to submissions on the point of sentence, which is quite harsh and unjust in view of the age of the accused and the victim girl which at the relevant point of time was of 20 and 13 years respectively, and secondly, and more particularly in view of an Affidavit filed before this Court by PW-2 Anupama, wherein she has gracefully stated that she is already married and she has condoned the act of the accused as it happened in spur of moment because of the tender age and immaturity. For this purpose, Mr. Shah has first of all invited our attention to the order passed at the admission stage on 15-11-1995 by one of us (my learned

Brother D.G.Karia J. sitting as a Single Judge). The said order reads as under:

" Admit.

Affidavit by the prosecutrix-Anupama Shambhubhai

Shah dated November 13, 1995, is produced which is taken on record. As regards correctness of the contents of the affidavit, it is ascertained from the prosecutrix who is personally present in the court today. Mr. A.D.Shah, learned advocate for the appellant undertakes to provide paper-book within 10 days from today. In the facts and circumstances of the case, the appeal is fixed for final hearing in the week commencing from 27th November 1995 ".

Thereafter Mr.Shah has invited our attention to the affidavit filed by PW-2 Anupama, wherein in substance it is stated that the accused Dharmendra is already married and having a wife and a minor child of two years. Under the circumstances, according to Anupama, if Dharmendra was made to suffer the entire period of RI of 7 years, that will consequently adversely recoil upon the happy marital life prospects of his wife and the only child which will shatter and ruin their lives. She has further admitted that the unfortunate incident took place because of tender age and immaturity. Not only that but after the alleged offence, about more than five years have already passed. The accused is the only bread-winner in his family and that there is none in his family to take care of his old parents also ! Under the circumstances, sympathizing with the accused, PW-2 Anupama has stated that neither she nor her family members are in any way interested in seeing the married wife and the minor child of the accused placed in a pitiable helpless condition. She has further stated that though this case is not compoundable, still however, she heartily prays this court to reduce the sentence imposed upon the accused, as a result of which he and his family members could be saved from the prolonged agony of seperation, uncertainty and losing the warmth, shelter and the companionship of each other. She has further assured this Court that because of the rape committed by the accused, she is in no way further prejudiced or harmed as now she is happily married and merrily passing her married life.

5. In support of the aforesaid submissions to reduce the sentence, Mr. Shah has relied upon three decisions of the Supreme Court and one of this High Court. All these decisions are on the point of reduction of sentence in the alleged cases of rape by young accused round about

the age of 20 years. They are (1) AIR 1980, SC 249 (Tulsing State of Haryana); (2) AIR 1989, SC 937 (Premchand VS State of Haryana); (3) AIR 1994, SC, 222 (Raju VS State of Karnataka); and (4) 1991 (2) GLR 124 (Budhiyo Chhagan Vaghari VS State of Gujarat). On the basis of the aforesaid submissions, Mr.Shah finally urged that taking into consideration the peculiar facts and circumstances of the case, this court should take a lenient view of the matter and release the accused with whatever sentence he has undergone. According to Mr. Shah, the accused has undergone his period of imprisonment for one year and two months which is sufficient to meet the ends of justice.

6. As against the above, Mr.Nigam Shukla, the learned APP submitted that looking to the gross facts, the sentence imposed upon the accused should not be reduced and that too reduced to the extent of the sentence undergone. The learned APP further submitted that the minimum sentence prescribed for the offence of rape is 7 years, and that the sentence essentially being the discretion of the trial court, merely because prosecutrix has tendered the affidavit, that is no ground to take a lenient view of the matter. The learned APP further submitted that if such practices of affidavit by prosecutrix are introduced and entertained, it may encourage some scheming, unscrupulous accused persons to forcibly obtain the same and get away lightly with reduced sentence !! The learned APP further vehemently submitted that the virus of rape is fast escalating in the society and if too liberal view of violent sex-crime like rape while imposing the sentence is taken, then the deterrent impact of the imprisonment getting blunted out, it will fail to deter the sex hungry wolves, maniacs in the society victimizing the innocent girls and the girls of the tender age. Once the court takes a liberal view, according to the learned APP, that will set an unfortunate bad precedent where the decision of this Court will be shown to the trial Court where it failing to differentiate case and case, may lightly let off the accused, and as a result, the most important punitive object of deterring the offender to commit such crimes in future as well as the like minded persons who are prone to commit such crimes will get lost. The learned APP further submitted that the instances of crime, rape etc. are increasing mainly because of the movies exhibited in theatres and on TV channel. The learned APP further submitted that off late there are certain late night TV Programmes where there is one channel known "Plus 21 channel" which exhibits pictures for adults which is alleged to be pornographic capable of corrupting the weak

and impressionable minds particularly of younger generation, which is otherwise banned by the Government is openly exhibited !! It is also alleged before us that some such 'Play-boy' channel displaying sex-vulgarity is exhibited in USA also !! The learned APP submitted that he is saying so on the basis of a news paper report viz. "Sunday Observer" published from Bombay. On the basis of all these submissions, the learned APP finally urged that taking into consideration the gravity and seriousness of offence, the sentence imposed deserves to be enhanced, if not, then atleast in no case there is any justification to reduce the same, as prayed for on behalf of the accused.

7. Now having heard the rival contentions on the point of reduction and enhancement of sentence, we at the very outset, would like to disallow totally baseless and misconceived apprehension of the learned APP that if the sentence in the instant case is reduced, it will set an unfortunate bad trend and precedent. We remind the learned APP of the settled legal position that on the point of sentence, there can never, never be any precedent. A Judge while imposing the sentence has to look to the peculiar facts and circumstances of that particular case, in his hand, and it is only when he is satisfied that the case calls for liberal view regarding the sentence, then on some illuminating guidelines from the higher Courts only the court takes that particular view. In this view of the matter, the submission of the learned APP that this court ought not to reduce the sentence, on the ground of bad precedent being totally misconceived, we accordingly summarily reject the same. Similarly, there is indeed no substance in the apprehension of the learned APP that if Court starts accepting Affidavits of the prosecutrix for reduction of sentence then it will encourage some overbearing, head-strong criminals to procure at any cost such affidavits and escape with the lighter sentence. The reason is before accepting and relying upon such affidavits of prosecutrix recommending lighter sentence, the Court before which matters are pending always verifies not only the truthfulness and genuineness of affidavit but in a given case also directs the concerned Investigating Officer to carry out discreet inquiry whether it was voluntary or was obtained under any fraud, duress or any other sort of coercion and black-mailing. This would be clear from two decisions of this Court reported in (1) 34 (1993) 1 GLR 810, State of Gujarat versus Bhikhaji Kaluji & Ors., (2) 31 (1992) GLR p-856, Mahipatsinh Panchaji Jadeja versus State Gujarat.

8. This now takes us to three core questions in this appeals viz., firstly, whether any case is made out for the enhancement of sentence or vice a versa for the reduction of the same ? Secondly, if either way yes, than what would be the just and proper order of sentence, and thirdly whether and when a State which to some extent as alleged is quite oblivious to its duties to the problem of mental health of the people and in particular to that of unwary youth continuously being influenced, victimized and obsessed by obsense film and pornographic literature perennial streamed through some of the T.V channels, polluting their clean consciousness, has it indeed any right to urge and press for the enhancement of sentence !!

8.1 To answer above questions, let there be before us the relevant circumstances pressed in service for the reduction of the sentence to already undergone. On careful and anxious perusal of the affidavit filed by the victim girl PW-2 Anupama, what we can read in-between the lines is that the offence of rape took place because of their tender age and immaturity !! This statement in the affidavit in a way is quite indicative of perhaps she was a consenting party though undoubtedly the consent will not make any difference because PW-2 Anupama at the relevant time was only 13 and half years of age. We wish we are wrong in drawing inference by reading in-between lines, though it is difficult to resist this inference !! However, in her affidavit before this Court, PW-2 Anupama has shown her heart-felt concern and anxiety about the married life of the accused and the shattering blow that it will get as a result of 7 years' rigourous imprisonment to his innocent wife and a minor child who has not committed any wrong !! We make it clear that merely because the accused is married or is having minor children or he is the sole bread-winner of the family and/or that he has old parents, these facts and such other circumstances may or may not be a good ground for taking a lenient view of the matter in all cases, but undoubtedly in the first place, her admission that the incident in question took place because of their tender immature ages and in the second place her voluntary, true, genuine and graceful pardon to the accused are two going to the root vital circumstances which has surely clicked our conscience to take a reasonable rather slightly lenient view of the matter while awarding the sentence as we would not certainly like any person to be a victim of the circumstance to be further victimized by continuing him to undergo the substantive sentence of r.i. for 7 years !!

8.2 In this case, it indeed can not be ruled out that the accused becoming victim of the blind sex instinct where his flooding, over-pouring upsurge in weak-moment of tender age overtook him, making him further blind, childish and indiscreet and/or may be further because of some bad company and/or because of the obscene magazines and the dirty obscene films electrified in each house that has probably lead him to commit rape on PW-2 Anupama ! This spreading of the most contagious, insatiable (barring few exception) quite an explosive sex desire appear to be now turning into chronic psychic epidemic in the society !! This is bound to catch unwary young generation of slippery age and immaturity to be readily afflicted with chronic disease like eves teasing, molesting, kidnapping and abducting girls, blackmailing them to marriage and/or have illicit sexual intercourse, rape, turning into violent rape, gang-rape, paedophilia in other words child-rape even, which all of us are terribly scared to think or dream of even ! No doubt, ordinarily, person should be discreet enough to resist such base desires, temptations but some may not be that capable to do so more particularly young person of the tender, immature impressionable age. Life experience tells us that we shall have to take into account quite unguarded highly sensitive emotional passionate, readily inflammable nature of many of our younger ones, wherein the ordinary discretion, maturity and wisdom is if not totally at some loss, will surely take some time to be ripe enough and blossom to the fullest extent to become immune to be incombustible. Further, regarding the sex-passion it is continuously fanned by dirty obscene magazines and movies. This is an indisputable and so far unremidied situation and accordingly howsoever high that society may think of its ideal state but if the sex and crime culture spreading situations are not taken care of, nothing could be substantially done to prevent sex crimes being committed, repeated and gradually increasing in the Society ! Under such volcanic tell-tale eruptible circumstances, if a girl aged 15 and a boy aged 20 afflicted with in-built irresistible sex-instinct, outward sex-virus and infatuation, on seeing each other in weak, unguarded moment, unable to control, get sexed and commits some indiscreet act, which of course is highly reprehensible, illegal, and undoubtedly punishable with the sentence of imprisonment, but then should this Court also be oblivious to the said conspicuous circumstances and be blind and mechanical in matter of imposing excessive sentence upon accused, who is required to be pitied more than ruthlessly condemned ? More particularly, what indeed the accused could do when all around in the society, the psychic atmosphere stands

increasingly polluted and degenerated and he like many other young-ones becoming the unconscious victim of the same, and further when the Government which is otherwise duty bound and accountable to control all such sorts of pollutions including the psychic pollution, does just nothing of the sort to prevent, (i) sale of obscene magazines, (ii) the production and exhibition of obscene films containing the nude dances with vulgar, double meaning songs in the pictures and (iii) the advertisement exhibiting indecent representation of women !! Sex has always remained the weakest point of man-kind, quite easy to inflame and blind persons often even aged one on any slightest pretext and opportunity than in that case what to talk about younger ones, who have no experience of life at their back ! The fact that the sex instinct is something over-powering and uncontrollable even by persons beyond the age of 50s or 60s needs no more further comments. It is such a weakest point where as narrated in our mythological scriptures (our invaluable inexhaustible wisdom treasure of para psychology !!) many a times even highest 'Tapasvis' have fallen down lured by sex-lust and if we want the illustration, it is the case of great Vishvamitra and Menka ! In fact, it is rightly said that sex lies hidden like a fire in the wood ! It is also further rightly said that the sex desire is like dry gun-powder which on even slightest pretext could be sparked off and has potentiality to get exploded. There are stories in our puranic shastras where some Saints on merely seeing even the sex play of birds and fishes getting provoked were lured down to sexual plane !! What we ultimately want to say and emphasis here is the fact that where the sex itself is the weakest aspect in human personality which can be further easily inflamed and set ablaze making a person to commit rape and pae asphilia even on slightest sexual provocation and further when this aspect is continuously fuelled and inflamed by the continuous inflammable stream, rather river of the obscenity all around, how are we to find fault with the girl of 13 years and a boy of 20 years, when they admit that whatever happened it happened because of the tender age and immaturity !! Its a known and accepted fact that the invasion by Satellite television channels and the resultant proliferation is spelling doom for the society !! Where indeed will it end no one knows as self-esteemed, self-styled intelligent and scientific minded members of the Society which perhaps know the deleterious evil effect of hot, blue T.V culture, but unfortunately is suffering from the psychological parkinsonism unable to hold itself steady, stand, walk, speak, grip anything or do any thing to cry-halt to its ugly invasion. Mind well, we are here not to condone

their quite grave and serious act of indiscreetness looking to the nature of serious offence and more particularly in view of the nature of evidence in support of it ! In fact, having regard to an unimpeachable prosecution evidence brought on the record, we are bound to confirm the impugned judgment and order of conviction passed by the learned trial Judge, even if Mr. Shah had not fairly conceded on that point, as the facts alleged and ultimately stand proved is an outright act of raping the minor girl by the accused where even if consented by the victim girl could not take it out of the purview of an offence punishable under Section 376 of the I.P Code. Further still, we do not want to propose any blind proposition of law that simply because one sees the dirty movies, and stands sex-provoked one gets indirect permission and/or exemption or justification rather a licence to commit such offences. No, that can never be the case. But at the same time, when it precisely comes to the question of judicially determining the just and proper quantum of sentence, the said factors can certainly never be ignored rather shall have to be precisely taken discreet care of. Further, in this regard, we also believe that in the existing set of circumstances in the society, where our unwary youth is increasingly exposed to and alarmingly leaning more and more towards drugs addiction, sex and all sort of crimes, etc., under the unfailing evil influence of blue-films, channels, etc. to control and tame such misguided youths, by way of quite hard and impressive lessons to them in life also somewhat stringent sentence with taste of bitterness and deterrence is required to be administered. This is to always remind and thereby impress and deter the concerned offender and some such other future offenders, by teaching that life of crime ultimately never pays and invariably rebounds leading to the imprisonment and thereby also social condemnation.

9. Incidentally, at this stage, it will certainly not be out of place to take the realistic stock of the situation of a sorry pass to and through which our unguarded, misdirected younger one's are subjected to and passing by. To blame anyone, and for that purpose, youth of the country is very easy, but to understand the unfortunate pitiable plight of them and their victimizing circumstances and further show them the way enabling them to get out of the rut is little difficult. It is here where the judicial awareness and wisdom is on the real test and has to play distinct role while reaching the ultimate conclusion of guilt and/or the quantum of sentence to follow as a consequence of conviction. We further believe that no Judge would ever be able to do

the real and substantial justice, if he is just unable to lift himself out of narrow compass of law and facts, unless he calls in aid the wisdom and pragmatism, the quint essence borne-out of the life experience, what in a word or two could be described as an approach of just and reasonable man known as a prudent man !! Accordingly, on appreciating their (accused and the prosecutrix) existing victimizing conditions and distinctly dwelling deep down upon it, quite sympathetically, the prejudice, wrath and anger otherwise generated against them because of their indiscreet criminal acts the same to quite great extent automatically gets evaporated and cooled-down with the wisdom whispering in our ears to be little pragmatic and considerate while deciding the question of sentence. Now moment you ask what is that realistic stock of the situation to which our young ones are unfortunately subjected to and accordingly has misfortune to cross by, the answer to this on the one hand is the growing distances between the spouses themselves and as parents, between them and their children in the matter of their personal attention and care and on the other hand the rampant psychic pollution unabatedly spread by some T.V. channels, and pornographic magazines victimizing the unwary younger ones with the most contagious and disastrous disease viz., the violence and indiscreet sex indulgence. Indecent films with sex and crime as main theme and pornographic literature of late as is alleged have crossed all bounds of decency to have rough and ready lessons for crimes, sex and flirtations trespassing in most of our houses and clubs. The problem has aggravated further deep-down because of the television era where more often than not, more than some good things of life being projected what is quite rubbish and objectionable is continuously projected polluting culture, more particularly quite innocent young budding generation our-tomorrow's India !! These society ruinous lessons are daily repeated and incessantly hammered, trespassing and storming practically all residences and clubs !! What young generation watches on television just readily seeds the crime and sex in their innocent minds, making them schemingly, mischievous, desperate and ultimately dangerous on the one hand playing with their own destiny unfortunately having no life experience of the ultimate deleterious consequences upon their lives to withstand and encounter the same and on the other hand with the lives, liberty, honour and dignity of women, and girls subjecting them to all sorts of sexual harassment !! These seeds of sex and crime gets further nurtured and sprouted in co-education. Some of the schools and colleges more than the educational institutions have as if turned into avenues of practicing the film culture

full of lust, sex and all sorts of crime of eaves teasing, black-mailing, molesting girls, kidnapping and abducting them in a filmy way and committing rapes also as readily learn from and inspired by indecent films and pornographic literature. Be it a bus-stop, railway station or any road and street, road side Romeos harassing girls is not uncommon !! Now every thought is like a seed. One seed has the potentiality to develop into the forest. Similarly, good or bad thoughts are productive or counter-productive of good or bad things. We quite know what thoughts are ultimately capable of and accordingly have brought about many kinds of revolutions in the world. The Gandhian thought brought about peaceful political revolution making British quit India and achieving Freedom. British 'Divide & Rule' policy catching hold of some Muslim the fundamentalists, brought about Pakistan. In Russia Marxists Leniencies thought brought about violent October Revolution !! China also under the great leadership of Maotse Tung brought about revolution based on the communist philosophy. Likewise revolutionary thoughts of Shankracharya, Gautam Buddha, Mahavir, and many more such other great Saints brought about great spiritual revolution in life of many ! Similarly, Scientific thoughts, researches and discoveries had brought about the agricultural, industrial and surgical in fact all sorts of technical revolutions through out the world including sending a man to moon and of late now even to Mars !! This would be further clear from the two wise sayings reflecting the powerful effect of axiomatic psychological truth of seeing and hearing upon a person in their turn giving birth to thoughts and these thoughts in turn sparking off action, building up character reaping the fruit of destiny sweet or sour, depending upon the quality of the seed or thought planted. At this stage, please relax and understand the potentiality of seeing and hearing, generating the under-current thoughts and actions and their consequential good or bad results in life. The first one is "sow your thought and reap your action. Then sow your action and reap your hobby. Sow your hobby and reap your habit. Sow your habit and reap your character, and finally, sow your character and reap your destiny !!" This is what a simple thought generated or seeded in the minds out of seeing and hearing which is capable of development or destruction of the character and/or the ultimate destiny of a person !! Similarly, in Brihadaranyaka Upnishad (IV 4.5), it is stated - to quote, "You are what your deep driving desire is. As your desire is, so your will. As your will is, so is your deed. As your deed is, so is your destiny." Similarly, Mr. Leland E. Hinsie, M.D., Professor of

Psychiatry, College of Physicians and Surgeons, Columbia University, in his book "The Person in the Body - An introduction to psychosomatic Medicine" in chapter five 'Psychological versus Organic sex' has observed, "The old proverb, As ye sow, so shall ye reap should be supplemented by another saying, "As is sown by others so ye reap" !! The first proverb places all the responsibility upon the reaper. To be sure, he is entitled to his share, but he is by no means the product of only his own seeds. What he reaps is a resultant of seeds from many other sources also" !! In chapter six on 'the Search for Recognition', Mr. Liland E. Hinsie has further observed that - "It is the belief of many investigators that sexual issues begin to form a part of child's life early in infancy and the sex has acquired considerable status by the time the infantile period is concluded, that is around the fifth year of life !! Likewise learned Bhagvat Acharya, Shri Rameshbhai Oza, in his one of learned discourse on 'Shrimad Bhagvat' observed that the first thought, impression received in the early morning and the last thought-impression received while on way to sleep at the end of all activities at night makes rather determines the quality of life and character of an individual. Shri Oza is quite right because when a person wakes-up in the morning by and large these days daily newspaper reports of social, political turmoil, excitement spills over his conscious. At night also, when he retires to bed mostly seeing T.V programme. The quality of programme, we know what it projects !! Now neither in beginning of the day nor at the end of activity at night time, most of the persons begin or end their day with some good, noble, positive, inspiring thoughts, about peace, prosperity morality and ethical building. The obvious and unavoidable result of all these, we know in the society, which is increasing unhappiness, sickness, mental disturbance and disorder borne-out of free lance indulgence in sex and crime !! Why it is so ?? What is the psychological, scientific reason behind this ?? The answer to this is when a person wakes up in the morning his chit, consciousness is comparatively quite pure, still and well composed and accordingly it is in totally receptive mood. Accordingly, the impressions thrown over it by newspaper report or T.V programme leaves strong-impressions and generates continuous ripples borne out of it going deep down into the sub-conscious ultimately affecting, prompting motivating activity, similarly at night also when tired and further when eyes getting tired and exhausted after seeing Television when one retires to bed the mind once again on its inward journey to silence and peace carries unconsciously with

it impressions and ripples of the last seen things which ultimately gets deep seeded in sub-conscious to sprout into actions on earliest available opportunity !! Thus both morning and night time impressions whether good and constructive or bad and destructive always and invariably plays most decisive role in moulding one's life ultimately shaping the character and destiny of an individual in turn of the society and country !! That is how bearing in mind this psychological principle rather the great psychological wisdom our Rishis, that in the early morning our wise forefathers used to pray 'Let me hear and see what is pure and beneficial".. Let only and noble thoughts come from all directions (vedas). Now what our Vedas and Upnisadhes said ages back is approved and affirmed by the western Psychologists also who tell us that a person learns consciously and unconsciously as well and over and above many other factors such as inherited predisposition, family influences, friendship and association influences, operant conditioning, deservational learning which plays its part in formation of the human personality. To this, the latest major contributory factors are powerful medias like T.V, Radio, press and literature. Consciousness according to Mr. Mc. Neil is awareness of one's own sensations, perceptions and thoughts. In fact, 'the learning is key process in human behaviour. It pervades everything we do and think" - say Morgan and King. Similarly, another Psychologist, Clifford T. Morgan has stated that "learning is any relatively permanent change in the behaviour which occurs as a result of experience or practice". He has also stated that the process of interpreting sensations making them meaningful is called 'perception'. Further still, according to Mr. G.W Allport "personality is the dynamic organization within the individual of those psychophysiology systems that determines his unique adjustments to his environment". Further according to Mr. Hilgard "Psychological motives are influenced primarily by learning and the kind of society in which individual is raised". Still further, according to Mr. Hilgard, "Emotions can activate and direct behaviour in the same way biological drives do". Once again according to the Hilgard and Atkinsons "Adult behaviour and the personality characteristics are influenced by events that occur during the earlier years of life". The saying "child is the father of man" reflects this continuity between the childhood and adult. Psychologists also tell us that hypnosis also play quite a distinct role in producing the changes in consciousness by putting suggestions to the mind of person to be hypnotized. When people see pictures, more particularly younger ones, the tempting story, captivating dialogue,

melodious music, love luring songs, exciting and provoking sex scenes, indulgence and crime just drop suggestions, stir-up their emotions making them prone to translate suggestions into action which catches them unaware like fish in the net !! During the process whatever a person just listens, sees and feels working as a subtle suggestion, it enters deep-down to his consciousness and sub-consciousness prompting him up to adopt, act and react to the said suggestion and these suggestions ultimately acting as a remote control to canalize and influence his thoughts and actions in particular direction for a particular thing takes control of him. This is how our businessmen through this sharp, subtle psychological device of mesmerizing and enslaving consumers' mind in its first stride, make them to react to their suggestions of luring, gradually preparing and ultimately pushing them to purchase the advertised items, be it fridge, T.V., Radio, Soap, dress, cosmetics, even the tooth brush and paste and what not !! and ultimately in its second and ultimate stride when a person goes to purchase a particular item, he from his made believed world believes that he is the master of choice and accordingly purchases particular thing but the real fact rather the startling truth is before he purchases a thing, his capacity to think, mental choice and scale of preference stands already mesmerized, influenced and brought under control by the mesmerizing advertisements and pre-purchased to have been left with any free-will which he can claim as his own while purchasing goods !! This is the power of subtle suggestions, gobelian propaganda, brain washing activity carried on by medias, where a person can be easily brain washed, coaxed, duped and chained and enslaved by any trickery of thoughts and suggestions; good or bad including sexual thoughts and crimes. This is what the atomic power of thought projected through suggestions is capable of capturing the mind and will of ordinary human being !! In the context of this indisputable, universal psychosomatic truth if we look at the increasing number of offences in our society against the women like "eve's-teasing, indecent gestures made to girls, molesting girls, kidnapping, abducting and black-mailing and compelling girls to marry even against their wishes, cases of rape and gang rapes, adultery, murder, dacoity and various other sorts of crimes, the question arises as to from where all these come ?? Out of nothing ? Undoubtedly, No. As already stated above, it comes from some of the alleged totally irresponsible, perverse, unscrupulous, anti-cultural film producers, cheap actors and actresses, models who for their so-called cheap personal popularity and get quick rich money making mentality, selling themselves to the

vulgarity, who under their subtle scheming device or disguise in name of entertainment and art like Trojan Horse carries in it concealed army of psychic germs invading and destroying the moral figure of the society, in particular, our unfortunate, unguarded youth where the girls and women are the maximum victims at their hands !! The most shocking and surprising part of the story is women actresses acting against the interest of girls and women of their own gender by allowing themselves to be stupidly filmed and screened to any vulgar, filthy indecent scene and often even naked sexual acts !! More than misbehaviour of some of the actors and actresses in the film, there is perhaps comparatively greater and growing apathy on the part of women organizations also in making some determined counter efforts to persuade this indecent sex-dolls to conduct themselves in orderly way and stop all non-sense and stupidity !! Excessive exhibition of sex indulgence, pornographic substances, including vulgar, indecent and dual meaning expressions, visual or verbal, duly incorporated and edited beyond the digestive power of imagination and shown in the latest indecent movies, magazines and advertisements cause to have a heart-burning impact on the tender minds of our younger generation, more particularly, the girls, women, teenagers and tiny tots. They are tempted to be tried in such a manner by the generation in toto without having foreseen its after effects on their character and destiny as an individual ultimately becoming quite problematic to the Society. The tempestuous scenes shown in the movies, advertisements and serials with unscrupulous money minded producers, actors/actresses or models, leads rather drives the younger generation mad to relentlessly adopting such visuals in their mind, which have an adverse result ! Ultimately, the tender minds are the scape-goats and the poor parents are the most miserable aggrieved lot repenting upon the indiscreet thinking and behaving of their wards ! For this, parents themselves have to thank themselves as it seems that, at least, some parents are just careless or for whatever reasons unable to exercise desired control over their wards. They do not know what their wards are actually doing after they are out in Schools, Colleges and other educational institutions, etc. The main discussions amongst these young ones at these educational temples are mostly concentrated upon heroes, heroines, villains and dirty dances of films, serials, etc. A serial based upon a good moral and family background may not be finding place for discussion in these gatherings !! But, the vulgar brake, shake, jirk dance scene with exhaustive or exuberant settings having over-excessive jerking actions, breast exposures, mouth to mouth kissing,

rolling over and over embraced to each other, with petticoat lifted a bit, singing sex-crazy vulgar songs are being discussed in its entirety with full of interest and excitement !! This is bound to be ! In very nature of things, psychologically this is bound to happen ! In fact, more and more our younger ones of the impressionable age goes on witnessing more and more pronography and crimes, the curiosity kindled thereby is further kindled and excited to know more and more about it and ultimately translate the same into action as if to have satisfaction of some big achievement ! At this stage, unfortunately, there is indeed none to warn and impress upon our younger ones that what is seen in the films is not a reality, but a mirage which gives appearance of water, but never quenches thirst howsoever long you may run dying after it. Similarly, unfortunately, filled and thrilled with such visuals, both girls and boys are blindly following the same which ultimately results into deterioration of moral, mental and phsycial health and the consequent turmoil to be suffered by them, their parents as well as the society !!

10. Prior to the invasion of television, satellite channels, etc. the crime rate of rape, robbery, theft, dacoity, murder, kidnapping, blackmailing and demanding ransom, etc. was comparatively very less not only in this culture-oriented country but even in the West. May be because of the fact that such visuals shown on cinema probably, the only medium - were random; the extremity was honestly censored, there were honest accountable Censor Board and the people and society were quite apprehensive of the law and its strict course of action. Now, the increase in population coupled with the change in life style to some extent as well as the invasion by satellite channels having full of indecent and ugly films, advertisements and serials and the availability of pornographic literature, lead the generation, more particularly, the younger generation ie., the tiny tots and the teenagers to travel beyond the limits of our culture and to do anything and everything they wanted without any fear. Who is there to censure - the Censure Board - as alleged apparently yielding to the pressure of powerful Cine Producer's lobby, where the honesty and integrity of such Board has become a matter of guess and big question mark by many ? Where is that eternal vigilance and counter actions against indecent film producers' lobby and shameless actors and actress from the society ? Is it not true that more than the aggressors, exploiters and the terrorists, it is the community which shamelessly and in silence suffers such aggression, exploitations and terrorism without any

resistance and counter revolt is responsible more guilty to claim any sympathy ?

11. Adding oil to the fire is the so-called fashion mania crept into our society at present due to the advancement of the media, as aforesaid. The television channels, cinemas and literature exhibiting such fashion parades by the so-called models in bare minimum clothing, who as alleged are ready to do anything and everything forgetting the culture, only for the purpose of minting money, create havoc in the younger generation, more particularly, the teenagers. The younger generation blindly imitates the models who were in such fashion garments (not even upto the thigh level) and half-brest shown upper jackets, etc., are the show for the teenage boys and even the onlookers, staring at them, uttering some comments, till they disappear from sight ! In certain cases, they follow the girls also and do some indecent acts !! The already upset, troubled and excited tender generation keep the visuals in their minds as they are, and tempt them to do anything as entertained by the mind, at the spurt of a time. The test as to how much grown up and matured the society is, is its awareness, and vigilance combined with determined action to relentlessly resist the evil influences generating medias and ultimately root it out before doing any further damage and destruction to our generation, and thereby the future of our country.

12. The crime rate is also becoming increasingly alarming due to the latest foreign channels as well. Showing late-night movies, serials, etc. also sow the destructive seeds of crime and sex in the minds of the kids. The culture, indigestible to the culture of our country is being put in and hammered. As aforesaid, the main victims are younger generation ! Compared to our indecent and vulgar cinemas and serials with half-naked bodies and dual meaning expressions, it is reported that the production coming from the outside world is shamelessly full naked !! Nodoubt, the time-slot allotted to such visuals is late-night so as to deter the kids from not viewing them. But nobody knows, whether the kid has slept or not, when such programme is being shown and when the parents are asleep ! The thinking power of the younger generation is lessened and they are most interested in seeing the visuals and making such visuals blindly to practical ! No doubt the parents cannot escape their duty, but more than the parent, the State is the foremost parent to take responsibility and care of younger generation, which is going to determine the character and destiny of tomorrow's India !!

13. T.V., films, radio, newspapers, advertisements, dramas are powerful medias to influence, educate and give direction to the people. Through striking banner-lines, captivating words, dialogues, gestures, songs, music, good or bad side of life get itself projected through aforesaid medias and ultimately taking driver's seat in the mind of the people shapes and directs their ultimate character and destiny good or bad. The ordinary techniques adopted by those medias are : (i) repetition, (ii) exaggerations, (iii) identification, (iv) appeal to authority, (v) appeal to prevailing discontent, (vi) the influence of slogan. All these, standing by themselves, are indeed quite good if canalized for the constructive purpose of rebuilding tomorrow's India. But unfortunately its an experience of many that mostly the canalization is in wrong and destructive direction where it has tended to make people, more criminal, more anti-social, more vulgar, more lifeless, more insincere, more dishonest, more sexual and more and more vulgar and shameless far away from the cultural and ethical values of life. What is to be done then ? Should these medias be banned ? No. Because this can as well be profitably utilized for the value based cultural and ethical revolution in Society ultimately improving the future prospects of peace and prosperity of the country !! In fact, gun which is unfortunately aimed at innocent unwary victims of the society the direction of it is just required to be reversed against those who are vomiting anti-cultural pollution. In the first instance, this is quite enough but this can be done provided only if the Government is potent, sincere and capable of resisting and bringing under control "lobby pressure". And in the second instance after taking preventive steps, Government should equally embark upon value based programmes aimed at uplifting the society from dirty cess pool of irresponsibility, vulgarity and criminality to place it on the highest pedestral of our glorified past heritage. We know that so far as defending the territorial integrity, sovereignty and the economic prosperity of the country is concerned, the Government is quite good and conscious enough to have a strategy and planning for its defence and development but unfortunately the very same strategy and planning of defence and development for on the one hand stopping the moral erosion and on the other promoting moral values in the country are concerned (which only can ensure the better, best and tomorrow Healthy, Peaceful and prosperous India), the Government is comparatively found to be quite weak and unconcerned !! This is where the Society stands betrayed and let down by the Government !! This cannot be ignored any further because what is the meaning of the territorial

integrity and spending for its defence where its inhabitant are not protected from internal aggression, rather psychic terrorism committed day-in and day-out by indiscreet crime and sex shown on T.V., disturbing the even and peaceful tempo of the social life !! Further still, what is the meaning of Constitutional protection to minors, girls and women, where no care is taken to prevent and destroy the sources motivating eves-teasing, kidnapping and abduction of girls, blackmailing them, rapes, murders and assaults on women and making younger generation turn more and more towards to be criminal. Under the circumstances, we think rather strongly feel and firmly believe that it is high time that we, as a cultured responsible, accountable members of the society, have to think over and dynamically apply and act to do the needful to save on the one hand the honour and dignity of girls and women, and on the other hand future and well being of our younger generation as a whole, before they are ruined and lost for ever !! We simply cannot stand a thought even, to find some day our Society, made up of grown up criminals and sexual terrorists, continuous hazard and menace to girls and women members of the Society and - that also, to our dearest wards and younger generation turning into ! We need a society of gentleman and gentle-women in spirit and not in mere look, where it blossoms like pretty flower and spreads sweet fragrance of virtue all round !

!! Undoubtedly, because the Government as often alleged, appears to be quite wooden on this front against such nefarious activities carried on by powerful lobbies, has shown no concern whatsoever to snub this non-sense in the society. Under the circumstances, unless the sharp powerful, effective public vigilance and public opinion is aroused and relentlessly upsurges, revolts and asserts itself with the unflinching determination, and further still, relentlessly followed with a determined action of going to the logical end against the crime generators to wipe out provocative crime and the sex scenes from the films and television, taking tough stand against irresponsible film producers, germ career channel owners, and even the passive censor board there is indeed no other way to compel the Government to resolutely work for its people. In this regard, any complacency on the part of any one of us of this generation is going to destroy all good things of life which makes the life peaceful and happy and thereby meaningful and worth living. We must know rather understand that universal, exceptionless great principle of 'Cause & Effect' !! Nothing happens or comes out of nothing !! Rather, all causes precedes effect. That means if you want to take care of effect, always take care of cause. It is said that, 'sins of the

parents visit their children'. In this regard, sins are not necessarily constituted by action alone as even omission on the part of any person to do anything to prevent any wrong being committed in the society is also equally a sin. The worst sin of this generation is totally unconcerned and wooden attitude in dealing with perverse film producers, actors and actresses, continuously exhibiting sex-indulgence and all sort of crimes making the society in particular budding generation of our sexually perverse and criminal in all respect. And it is this sin which is bound to visit our posteriors shattering their family and social life !! This is going to result into rampant increasing criminal activities, of murder, eves-teasing, molesting, kidnapping, abducting, black-mailing young girls making them agree to marry, decoity, rapes, so much so that if this anti-social onslaught is not thwarted in time, the prostitution in every home would be the order of the day because of the excessive sexual indulgence and the vulgar culture of the permissive society approach, brainwashing the younger ones. To have a rough and ready picture of escalating crime score in the country, we deem it proper to produce hereunder a Chart showing incidence of crimes committed against women during the year 1994.

14. In view of the aforesaid discussion, we believe that the time is indeed quite ripe for all sensitive, sensible and the responsible people just to think, rather feel what would be the meaning of the trumpeted glorified economic prosperity brought about by our space age or the computer age or the age of super technical advancement today and much more in the days to come, when the social life would be rendered full of discontent, frustration, bitterness and all sort of suffering and miseries from all sorts of psychic and physical ailments, and ultimately, in the end, placeless, purposeless and broken down with obscenity, vulgarity and crimes totally eclipsing the moral, cultural values for which our country proudly stood. If an unfortunate trend of curse of pornographic films and magazines will continue without any effective check by the Government, we just shudder to think and imagine what further curse will the twenty-first century bring to our people !! Do we want our Society of the type which cannot sleep without taking the sleeping-pills and/or down with the frustration ultimately end their lives by committing the suicide, as it is increasingly happening in the West !! If not, let us not waste any time to do the needful in the matter at the earliest.

15. We have come across a case of a father, who had

lost his wife when his minor son was only three years. He had a television set. He used to go to his office for job and his minor son was being looked after in a Creche. After office hours, he used to bring his son home. He had to do all household work. Recently, he had sold out his television set because of the excessive viewing by his minor son. When questioned about his excessive watching the television programmes, son replied that "what for this is being show - not for viewing ?" Due to this the father in order to prevent his son becoming victim of evil influence of TV shows was constrained to dispose of T.V set !!. The father also instructed his neighbours not to allow his minor son to watch television. In fact, these days it is an experience of many that it is not at all possible for a family sitting together to watch any programme on the television because of the excessive vulgarity.

16. In this view of the peculiar facts and circumstances of the case as discussed above, in our opinion, there appears to be more than sufficient and adequate reasons to reduce the sentence. Accordingly, the impugned judgment and order requires to be suitably modified.

17. In the result, Criminal Appeal No. 726/95 is partly allowed. So far as conviction for the alleged offence of rape under section 376 of IPC is concerned the same is confirmed, however, the impugned order of sentence is modified that from 7 years to 2 years r.i. Further, so far as conviction for the alleged offence under section 452 is concerned, the same is confirmed, and the sentence of two years awarded by the trial court is confirmed. So far as the sentence of fine is concerned, the said order is confirmed. So far as Criminal Appeal No. 912/95 for enhancement of sentence is concerned, the same stands dismissed.

18. While parting, as Constitutional functionaries, we would be simply failing in our duties if we do not bring it to the notice of the highest authority in the Central Government as well as the State Government that something radicle is required to be done and done atones without losing any further time to prevent continuous erosion our culture, victimizing our younger ones, resulting into recurring down right assault and affront upon the respect, dignity, honour and safety of our young girls and women by our generation, young and old, provoked and motivated by objectionable sex crime scene electrified on T.V and films. Everybody knows it that many a times obscene films which are illegal and

punishable under the law are exhibited freely and fearlessly as if no Government taking the care of the culture and people is existing ? This we are tempted to say so because our Parliament in recent past only has enacted the Indecent Representation of Women (Prohibition) Act, 1986. We are not aware whether the law enforcing agency has taken any serious note of such an important Act to register the offences for the alleged indecent representation of the women against any person ! This we say so because we do come across some such prima facie indecent representation of women in advertisements and some vulgar dances, scenes and songs exhibited in films often acted in real life in school, colleges, near bus-stops, ladies hostel, garden, markets which goes on without any let or hindrance from the law enforcing agency ! This particular Act has been specially enacted to prohibit indecent representation of women or depiction in any manner appealing to the baser instinct of young and old corrupting their minds ! In this regard, Sub-clause (c) of section 2 of the said Act defines 'indecent representation of women' which reads as under :-

S.2(c) 'indecent representation of women' means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals ".

The above definition meaning of the indecent representation of women ex facie would make it clear that many films and advertisements clearly come within the sweep of the offence under the Act !! Similarly, sections 3 and 4 of the said Act pertain to the prohibition of advertisements containing indecent representation of women and publication of books, pamphlets, films etc. For contravention of sections 3 and 4, same is made punishable under section 6 of the said Act on first conviction with the imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lac rupees. For these offences even the companies under Section 7 of the Act can be prosecuted committing offences under sections 3 and 4 of the Act. Further these offences by virtue of section 8

of the said Act are made cognizable and bailable. If the law enforcing agency honestly, sincerely and vigorously implements the provisions of the aforesaid Act, particularly in view of the provisions for the minimum sentence for the second and subsequent offence, much headway indeed could be atones achieved in stalling the unsavory situation created by pornographic literature and films, exhibiting vulgar sex dance, music, poisoning the minds of younger generation, who in turn turn out to be a curse to girls and women in society by committing all sorts of atrocities on them. If the concerned law enforcing agency fails to discharge its duty strictly enforcing the relevant law, enlightened citizens must protest and revolt against them till the time it is brought to the sense of enforcing law in right earnest. Infact, it is the duty of every District Magistrate, District Superintendent of Police and the concerned Commissioner of Police to see that in each and every Taluka, there is a special and effective girls-women protection Cells, enforcing relevant laws enacted for the protection of girls, women and young lads with iron-hand. In this regard, it is for the Chair person of National Women Commission to take up this suggestion from the Court in her right earnest and see that it is effectively implemented. If we want to save the country from the aggression, rather terrorism upon our Indian culture, if we want to save the youth of our country becoming stupid sex-addict, if we want to provide safety and security to honour and dignity of girls and women from the roadside Romeos and sex maniacs, and if we want to save the country from continuous erosion of high-values and in particular replacing the bravery in youth by substituting it by the vulgarity and impotence, the Government must act with a firm resolve and determination to meet with this evil. As a matter of fact, many a times, a question does arise when we see obscene movies, whether there is any Censor Board worth the name or has it become passive or is purchased, as alleged by people ? Who will censor the Censor Board ? The Government for this purpose shall have to recall guts and courage to itself to meet with the challenge of powerful lobbies of film producers and persons who are running channels on TV. We hope and trust that these observations of us will be taken serious note of not only by the Prime Minister and his other Cabinet colleagues, but also by responsible women action groups and particularly the Chair person of National Commission of Women under the said Act of 1990. We honestly believe that the Chairperson of NCEW is quite active and doing the needful in the direction. However, it appears that if anything in particular in the matter of indecent representation of women in advertisements and

films, etc. if not done anything by it, then we request the said Commission to focus its attention and that too on war footings on the offences against girls and women on the questions raised and discussed above by taking necessary stern steps against all concerned for gross abuse of the film exhibition in theatres and TV channels. We believe, rather are convinced, that perhaps worst than the danger of atomic radiation, as the result of some irresponsible periodic atomic tests endangering the overall existence of human species on the earth, is the danger of fatal psychic virus of sex and crime incessantly spread by some unscrupulous, perverse money minded film producers, directors, actors, actress, etc. and the publishers of pornographic literature. And accordingly, therefore, let there be no mistake about this in understanding the problem involved. In this view of the matter, perhaps more than any importance and urgency of Comprehensive Test Ban Treaty (C.T.B.T) there is equally urgent and imperative need to have global consensus to have effective checks and control on irresponsible persons and medias continuously radiating evil thoughts, songs and vulgar scenes, victimizing our generation, making them anti-socials, destroying peace and harmony in the community, more than that, committing act of atrocity and terrorism on minor children and women. In fact, here the fundamental question which goes to the root is the basic human right of girls, women and younger generation of tender ages of protection from psychic pollution, and vulgarism continuously tending to criminalize and voluptuousize the society. If appropriate steps are not taken to prevent the exhibition of the obscene films and advertisements and models more particularly on TV, in the right earnest one will not be surprised if the lessons in the art of crimes and prostitution may turn our sons, daughters and sisters in all the houses having TV channels into rank criminals and prostitutes because the actors and actress are projected to be idols, heroes and heroines, sex-king and sex-queen in the society and the senseless generation applauds and apes their action in life identifying themselves with some such cheap heroes and heroines, committing all crimes against girls and women ! Sex and crime addiction in our younger generation is fast spreading crossing the danger line, which is going to be worst than drug addiction !!

19. For the maintenance of law and order, the Judges of High Court , as a Constitutional functionary, have a special and definite role to play !. The reason is that during his tenure as a Judge, he comes across thousands of such cases where he finds number of offences of the

particular type repeatedly taking place, which if the reasonable care is taken by the law enforcing agency and the legislature taking suitable steps to prevent particular type of crime-can prevent the same. For this purpose, the legislature enacts substantive and procedural laws and accordingly entrusts the duties to the law enforcing agencies. But it is a matter of common knowledge that these duties by the statutory functionaries are performed in routine, impersonal and many a time in quite casual and in perfunctory manner !! When a person commits a crime, the same is registered as an offence, the investigation takes place, the chargesheet is filed against the accused to face trial before the trial Court where he ultimately stand convicted or acquitted as the case may be. The Legislature, after passing a particular Act obviously rests contented when the Act is passed leaving the rest of the enforcement part to the law enforcing agency. The law enforcing agency, in its turn discharges its duty by investigating and filing the chargesheet and the Court also, in its turn, just appreciates the evidence and convicts or acquits the accused. This is being done in the routine manner by the legislative, executive and judiciary, but then, in between these important limbs of the State, there indeed appears to be none to take the overall stock of the situation as to just in what possible manner such crimes can be prevented right from its source , if not fully prevented, atleast controlled and reduced. At this juncture, if the High Court also decides the case confining itself strictly to the appreciation of evidence, interpretation of the relevant law or the rule resolving bipartite issues the case wise that may be enough, but society-wise no contribution. Who will do this. In this regard, we believe that it is only the High Court Judge who is at such a vintage point of opportunity from where instead of mechanically deciding the case, should express himself as to what ought to be done to prevent the crime being committed also more particularly where victims on mass scale are minor girls, women, etc. There is none else to take the stock of the situation. It is for this special reason that while giving a judgment, in appropriate cases, once a while the High Court Judge has to see that not only justice is done in between the parties, but he also expresses his own view on the basis of which, the attention of the legislature and executive and the public spirited social organizations can be invited as to what is required to be done and at least, something is done if not totally to prevent the crime being committed then atleast regulated and reduced to the minimum !!! It is with this irresistible noble urge in mind and impelled by

the sense of duty that we at our fag end of the career, even at the cost of perhaps being little prolix, have seized this opportunity to discharge our debt to the society as High Court Judges towards our daughters, sisters and the grand children like younger generation, the unwary, unfortunate victims of abuse of TV., films and pornographic literature ! May be some other may hold a different view about the necessity to elaborately discuss on the subject going beyond the facts and law of the case at hand, but we in our discreet opinion, have found it to be quite relevant, just and proper, in the overall public interest to fully express ourselves on causes and effect environmental theory of crimes on the society so as to keep under control the crime rate and in particular harassment and all sorts of cruelty to girls and women in the society. In that view of the matter, let not authorities forget two wisest saying having a direct bearing of cause and effect on the society viz., "As you make your bed, so you must lie on it" and "It is an ill-wind that blows nobody any good". We once again, speaking for ourselves, believe that it is far better to hopefully concentrate, cultivate and dedicate to good health, physical, psychic and moral rather than ultimately worrying on gradually losing the same and desperately treating the disease.

20. At the end, having appreciated the ultimate deleterious impact of the cause and effect of the diseased thoughts generated by witnessing and reading the pornographic films and magazines - brainwashing and moulding the sex-lunatic and criminal behavioural pattern of the society and in particular of the immature young buddies, the most obvious question that arises is that having diagnosed the disease, what prescription is needed to control and eradicate the same before it proves to be chronic, irremediable and ultimately fatal ? The rough and ready prescription is short term preventive and long run the resistance and health boosting action oriented planning. Now who can do it ? Undoubtedly, in the first place, the Government, failing which in the second place, quite vociferous, enlightened and effective public opinion and equally vigilant follow up action from the people !!

20.1 First then, how the Government can do it ? In this regard, the first step would be of forming the special ministry for the purpose, known as 'the Ministry of Psychic & physical health, moral values and the personality development'. This in turn should have three special wings viz., (1) the preventive cell, (2) the moral values development cell (3) and the liaison cell

monitoring the actions and progress of both wings - and ultimately submitting noting for the desired prompt action and ultimately seeing that the proposed action is materialized !!

20.2 The Preventive Wing. This Wing shall consist of two units viz., intelligence and follow up legal action till its logical conclusion. The intelligence branch shall collect of its own information regarding the pornographic films and magazines and consequently like army patrolling the frontiers of the country must constantly look after (i) the kind, extent and degree of psychic pollution, (ii) what are the sources and/or medias, persons involved and responsible for abusing medias, corrupting, sexualizing and criminalizing the society ? (iii) For the past obscene films and magazines who were the producers, director, actors and actresses, models, publishers etc. etc. (iv) To collect those films and destroy them. (v) Who was the President and Member of the Censor Board, who gave certificate to exhibit pornographic dances, scenes in the picture ? (vi) to take appropriate action against the concerned delinquents. For this, if the need be, the Parliament to protect the interest of the weaker sections of the Society viz., girls, women and children must pass appropriate special Act with Special Law Enforcing machinery and special Courts also.

20.3 Value based, national construction oriented personality development wing. This Wing shall dedicate and accordingly focus itself on shaping the ideal character and personality of younger generation. That will cover subjects right from K.G to the post-graduate course. It will concentrate on physical, mental moral and spiritual development of the individuals. For this purpose, this Wing must have a brain pool Committee of experts on Yoga, all sorts of other exercises and sports. The second Committee must consist of the Secretary, Information & Broadcasting, Doordarshan aided by Top psychologists, psychiatrists of the country who can advise the Government as to in what ideal manner it can systematically educate and train people by producing value based inspiring constructive films, which can ultimately bring about happy-home, and in turn, peaceful and responsible Society. The private film producers and Doordarshan, and other people also can be motivated to produce moral boosting, nation-building films which in turn produce an ideal Indian human being. This process must be relentlessly go on. These programmes on working days should be televised between 6-00 AM and 8-00 PM to 11-00 PM to go deep down in consciousness of our younger

generation. To catch their attention, younger ones should be motivated by attractive prizes - like freeship in schools, colleges, hostels, study-tours etc. This can be done by the gifts offered by the advertisers.

21. Many a times, so many objectionable scenes are given clean-chits under the name of Art. But what is displayed by way of Art whether it is art or not is to be appreciated in the light of the result it produces on the tender mind. If what is claimed to be artistic, ultimately depraves a man and affects his/her behavioural pattern reducing them vulgar, immoral, then to treat something as an Art is nothing but a self-deception. The ultimate test for anything projected in the films or published in the magazines is an 'art' or clearly obscene and illegal is whether the situation scenes, dresses, dialogues, songs, dresses are capable of influencing and thereby depraving the behaviour of person likely to result into harassment to girls and women. While appreciating the obscenity aspect, court must have pragmatic and sensible approach of ultimate effect on the mind of younger impressionable buddies. Art in that sence, can not be appreciated in absolute and isolated sense. No court can be permitted to take risk in absolving an accused on the ground of particular work in the field etc. is an art. If its ultimnate fall-out is vulgar, creating problems for minor boys, girls and women, ignoring altogether social interest.

21.1 It is quite indisputable fact that no country, rather no Government, which ignores the interests of minors, girls and women, apart can ever have peace any progress would suffer from anarchy and destruction. The author of 'Crime in India 1994, in Chapter-7, under caption "Crime Against Women" highlighting the plight of the women, has rightly observed that " The gender difference and bias, perceived as existed globally, places women all over the world at various dis-advantageous positions. The most painful discrimination of women is the physical and psychological violences perpetuated on them. Notwithstanding the equality guaranteed through Constitution, for many women life is stalked by various threats of violence. The threat of violence on women manifests right before their life begins, continues to scare the early life, follow in the married life as domestic violence, endangers as victims of rapes and worse than that end in murder or suicides in some cases. The recent UNDP report states that even under law the equality of women is not yet assured in many societies let alone in practice "It further adds - "Although violence stalks women lives laws

can do little unless present cultural and social values change ". In this context, the issue of crime and violence against women is serious social problems. The rights exclusive to women even puts the problem, subject of offensive behaviour against women be it against their body or against their sensibility as crime against women. In the very same Chapter, in para 7.1.2., it is further observed that - In India, women are guaranteed equality, freedom, opportunity and protection by the constitution and several legislations, nonetheless continue to be victims of domestic violence, family violence, violence in the community and at work places. Illiteracy, ignorance, lack of awareness, poverty, added with traditional oppressions and customs, place the Indian women at uneven status/environment ". Similarly, in Chapter=8, under caption - "Crime against children", highlighting the plight of children, it is observed - " Universally, children, the would be citizens of tomorrow are disadvantaged in one significant respect. That they are defenseless, both mentally and physically. The nature, perhaps, has ordained so. The far reaching changes due to scientific, technological and economical advancements have greatly impacted the life styles, social needs and specifically social values. Born and brought up under conflicting conditions, the status of children, particularly the orphaned, lone uncared, weaker are open for exploitation and they fall easy victims to several crimes perpetrated against them. Innocence, lack of experience, exposure, improper care/guidance are some of the contributing factors for their vulnerability and external influences. Crimes against children those involving violence, physical and mental such as child abuse, forced labour and child prostitution are becoming matters of serious concern nationally as well as internationally." To this can be certainly added the most destructive role played by the medias, corrupting and criminalizing the minds of younger generation making them vulgar and training them instrumentalizing - to harass girls and women ! With this picture presented to all concerned, we are hopeful that something would be done by the Government and the people to call halt to the pornographic films and literature, motivating free sex and crime indulgence in the society under the name, cover and camouflage of art. The task to some may ap.T...

talk, but cannot be abandoned. In words of Lao-Tze, the great Chinese Visionary "A journey of a thousand miles must begins with a single step".

22. The Registrar is directed to forward a copy of this judgment to (1) The Prime Minister, Union of India,

New Delhi, (2) The Governor of Gujarat, Gandhinagar; (3) Secretary, Legal Department, State of Gujarat, Gandhinagar; (3) Minister for Information & Broadcasting, New Delhi; and (4) Chairperson, National Commission for Women, New Delhi, (5) The Chairman, Gujarat Judicial Academy, Ahmedabad, for information and necessary actions at their respective ends.

Prakash*

.....T.....T.....T.....T.....T.....J.....T.....T.....T.SP 1

INCIDENCES OF CRIMES COMMITTED AGAINST WOMEN DURING 1994

Sr. No.	State/UT	Rape	Kidnapping	Dowry Deaths	Torture
				(Cruelty by Husband and his relatives)	

1.	2.	3.	4.	5.	6.

STATES:

1. Andhra Pradesh	854	571	396	2295
2. Arunachal Pradesh	28	25	0	3
3. Assam	441	600	13	293
4. Bihar	823	524	296	483
5. Gao	7	9	0	16
6. Gujarat	290	620	105	1563
7. Hariyana	198	240	191	351
8. Himachal Pradesh	110	178	4	140
9. Jammu & Kashmir	123	316	0	11
10. Karnataka	279	320	170	1159
11. kerala	193	105	9	550
12. Madhyapradesh		2801	971	354 1815
13. Maharashtra		1275	912	519 7105
14. Manipur	6	67	0	1
15. Meghalaya	32	14	0	0
16. Mizoram	37	8	0	0
17. Nagaland		1	2	2 0
18. Orissa		364	221	169 361
19. Punjab	108	112	117	87
20. Rajasthan		1002	2276	298 2277
21. Sikkim	8	4	0	0
22. Tamilnadu	265	441	83	247
23. Tripura	61	32	6	45

24. Uttar Pradesh	2021	2860	1977	3943
25. West Bengal	743 773	85 037		

TOTAL (STATES)	12070	12201	4795	25783

UNION TERRITORIES				
26. A & N Islands	4 4	1 3		
27. Chandigarh	9 41	3 14		
28. D & N Haveli	2 5	0 7		
29. Daman & Diu	0 0	0 0		
30. Delhi	261 741	132 136		
31. Lakshadweep	0 0	0 0		
32. Pondicheri	5 6	4 3		

TOTAL UTs.	281 797 140 163			

TOTAL ALL INDIA	12351	12998	4935	25946
=====				

INCIDENCES OF CRIMES COMMITTED AGAINST WOMEN DURING 1994
(Continued)

Sr. State/UT MOLESTA- SEXUAL IMPORTING
TION HARASSMENT/ OF GIRLS
EVE-TEASING (UPTO 21
YEARS)

1. 2. 3. 4. 5.

STATES:

1. Andhra Pradesh	2185 3710 6		
2. Arunachal Pradesh	28 1 0		
3. Assam	184 13 1		
4. Bihar	432 75 3		
5. Gao	21 11 0		
6. Gujarat	1017 97 34		
7. Hariyana	356 426 3		
8. Himachal Pradesh	286 19 0		
9. Jammu & Kashmir	237 213 0		
10. Karnataka	1059 94 0		
11. kerala	679 3 0		
12. Madhyapradesh	6362 1158 23		
13. Maharashtra	3007 541 41		
14. Manipur	8 0 0		

15. Meghalaya	11	0		0	
16. Mizoram		32	0		0
17. Nagaland		1	0		0
18. Orissa		955	122		2
19. Punjab		60	8		21
20. Rajasthan		1505	49		28
21. Sikkim		31	0		0
22. Tamilnadu		935	1195		3
23. Tripura		95	0		1
24. Uttar Pradesh	2891	2216		0	
25. West Bengal		1295	17		0

TOTAL (STATES)		23772	9968		166

UNION TERRITORIES

26. A & N Islands	18	5		0	
27. Chandigarh		17	40		0
28. D & N Haveli	1	0		0	
29. Daman & Diu	0	0		0	
30. Delhi	291	116	1		
31 Lakshadweep		0	0	0	
32. Pondicheri		18	367	0	

TOTAL UTs.		345	528	1	

TOTAL ALL INDIA		24117	10496		167
=====					

INCIDENCES OF CRIMES COMMITTED AGAINST WOMEN DURING 1994 (Concluded)

Sr. State/UT IMMORAL INCIDENT TOTAL
TRAFFIC REPRESENTA-
(PREVE.) TION OF
ACT (PROHI)
ACT.

1. 2. 3. 4. 5.

STATES:

1. Andhra Pradesh	264	38	10319	
2. Arunachal Pradesh	00	00		85
3. Assam	000	00		1545
4. Bihar	8	129		2773
5. Gao	15	0		79

6. Gujarat	3 45		3775
7. Hariyana	1 13		1779
8. Himachal Pradesh	000 00		737
9. Jammu & Kashmir	000 000		901
10. Karnataka	2013 88		5282
11. kerala	54 16		1609
12. Madhyapradesh	4 21		13509
13. Maharashtra	163 05		13568
14. Manipur	4 0		86
15. Meghalaya	01 0		58
16. Mizoram	00 0		78
17. Nagaland	00 0		6
18. Orissa	8 11		2213
19. Punjab	1 5		520
20. Rajasthan	26 1		7462
21. Sikkim	00 0		43
22. Tamilnadu	4825 17		8011
23. Tripura	00 0		240
24. Uttar Pradesh	6 0		15914
25. West Bengal	34 00		5984

TOTAL (STATES)	7430	389	96576

UNION TERRITORIES			
26. A & N Islands	00 0		35
27. Chandigarh	00 0		124
28. D& N Haveli	0 0		15
29. Daman & Diu	0 0	0	
30. Delhi	102 0	1780	
31 Lakshadweep	0 0	0	
32. Pondicheri	15 0	418	

TOTAL UTs.	117	000	2372

TOTAL ALL INDIA	7547	389	98948
=====			

Courtesy from "Crime in India - 1994"

By National Crime Records Bureau

Ministry of Home Affairs,

Government of India, New Delhi.

DBM/Pt*